

The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DONNA GAIL SCHNEIDER

Appeal 2007-0749
Application 10/684,312
Technology Center 3700

Decided: September 20, 2007

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, and
HUBERT C. LORIN, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellant appeals from a rejection of claims 1-16, which are all of the pending claims.

THE INVENTION

The Appellant claims a heating device having a variable configuration of side panels. Claim 1 is illustrative:

1. A device facilitating the heating of items, the device comprising:

a collapsible frame for suspending an item above a heat source, the frame comprising:

a plurality of panels forming sides of the frame when the frame is erected, wherein a side of the frame comprises a variable configuration of panels, the configuration being selected by a user of the device to adjust an attribute of the enclosure when the device is in use for heating, the attribute including at least one of: how much of the side is enclosed, which portion of the side is enclosed, a volume substantially enclosed by the frame and an overall shape of the frame.

THE REFERENCES

Slattery	US 4,508,096	Apr. 2, 1985
Bach	US 6,439,225 B2	Aug. 27, 2002

THE REJECTIONS

The claims stand rejected as follows: claims 1-7 and 14-16 under 35 U.S.C. § 102(b) as anticipated by Slattery, and claims 8-13 under 35 U.S.C. § 103 as obvious over Slattery in view of Bach.

OPINION

We reverse the aforementioned rejections. We need to address only the sole independent claim, i.e., claim 1.¹ That claim requires that a side of an enclosure's frame comprises a variable configuration of panels selected by a user to adjust an attribute of the enclosure including at least one of how much of the side is enclosed, which portion of the side is enclosed, a volume substantially enclosed by the frame, and an overall shape of the frame. The Appellant discloses adjusting the attribute by varying the number and sizes of side panels (Spec. ¶ 0031; figs. 3-5).

Slattery discloses a variable cooker comprising a fire pan (12), a cover (14), a grill (20), side plates (22, 24), end support plates (26, 28), and handles (30) (col. 2, ll. 22-41; fig. 5). The parts other than the fire pan and the cover can be stowed within the fire pan and the cover (col. 2, ll. 27-30; fig. 2).

The Examiner argues that the disclosure in Slattery's abstract that "the cover of the unit may partially or completely enclose the top of the assembly for smoking or baking purposes" is a disclosure of the Appellant's attribute adjustment (Ans. 5). The Appellant's attribute must be adjusted by user selection of side panels. Slattery's positioning of the cover is not a selection of side panels.

¹ Regarding the dependent claims the Examiner does not rely upon a modification of Slattery or rely upon Bach for a disclosure that remedies the deficiency in Slattery as to the independent claim (Ans. 3).

The Examiner argues that the disclosure in Slattery's abstract of "providing support for the grill at different levels above the fire pan" is a disclosure of varying the volume substantially enclosed by the frame (Ans. 5-6). Moving Slattery's grill to a different bracket (36) on an end support plate (col. 2, ll. 60-64; fig. 4) does not vary the volume enclosed by the frame.

We therefore find that the Examiner has not established a prima facie case of anticipation of the inventions claimed in the Appellant's claim 1 or its dependent claims 2-7 and 14-16. Because the Examiner has not explained how the subject matter in the Appellant's claim 1 that is missing from Slattery would have been rendered prima facie obvious to one of ordinary skill in the art by Slattery or Bach, we conclude that the Examiner has not established a prima facie case of obviousness of the inventions claimed in the Appellant's dependent claims 8-13.

DECISION

The rejections of claims 1-7 and 14-16 under 35 U.S.C. § 102(b) over Slattery and claims 8-13 under 35 U.S.C. § 103 over Slattery in view of Bach are reversed.

REVERSED

vsh

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